Chapter B: Involvement of the Republic of Armenia in the conflict of Nagorno-Karabakh

I. Object of investigation

From 1988 onwards, the secession process of Nagorno-Karabakh has been characterised by a high level of violence. What started out as mass demonstrations developed into a civil-war-like situation, paramilitary skirmishes and, at least unofficially, an interstate confrontation.[1] The violent conflict ended in 1994 under a ceasefire agreement. Since that time the conflict is considered as frozen but not resolved. Armenian troops are still stationed in Nagorno-Karabakh and another seven surrounding Azerbaijani administrative districts debarring Azerbaijani authority. Officially the Republic of Armenia denies being a party to the conflict.[2] Instead it claims merely to support the attempts of Armenians living in Nagorno-Karabakh to gain independence. However, this necessarily gives rise to the question of whether Nagorno-Karabakh did in fact prevail against Azerbaijan largely on its own or whether there was any material involvement by Armenia, which would possibly be viewed very critically from an international law perspective. At first sight, only the latter would appear to be the case, since the region of Nagorno-Karabakh regarded itself as economically less developed than the rest of the Azerbaijan SSR. The region would therefore scarcely have been in a position to withstand a full-blown war of secession, force back the official Azerbaijani forces and establish an entity that exists to this day.

As established in Chapter A, Nagorno-Karabakh was not able to develop as an independent state and is therefore still recognised as a part of the Republic of Azerbaijan. Correspondingly the conflict has been an internal matter of the Azerbaijan SSR and later of the Republic of Azerbaijan. Any external intervention in this matter by another Soviet republic would have drawn criticism even under Soviet law. Like every other Soviet republic, the Azerbaijan SSR was constituted as a "sovereign" Soviet state under Art. 76 of the 1977 Constitution of the USSR and could, at least at the level of the union republics, demand respect of its integrity.

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1 See above, chapter A, section II. 5. and 6.

2 In particular according to an interview with Armenian President Kotscherian on 10 July 2007, http://www.spiegel.de/politik/ausland/0,1518,493351,00.html. Cf. also Human Rights Watch, Azerbaijan, Seven Years of Conflict in Nagorno-Karabakh, 1994, p. 67.

The violent involvement and intervention of states in others' affairs is even more problematic from the perspective of international law. This includes not only the military involvement of a state's troops in internal conflicts of other states and the military occupation of foreign state territories, but also the military, financial and logistical support of rebels and armed groups or the systematic incitement to acts of a civil-war-like nature.

In this context international law establishes two fundamental prohibitions which are based on the general obligation to maintain peace and the principle of the sovereign equality of states. These two fundamental bans are the prohibition on the use of force and on intervention. The relevance of these prohibitions shall be investigated in relation to the Republic of Armenia below (parts II and III). This throws up questions of a legal and factual nature requiring closer scrutiny. They relate to the special circumstances concerning the transformation of the Soviet republics involved, the recourse to the peoples' right to self-determination, a possible humanitarian intervention and also the extent of the actual involvement of the Armenian SSR and the Republic of Armenia in the Nagorno-Karabakh conflict.

The conduct of the Republic of Armenia by its state organs or by persons and entities that are empowered to exercise elements of governmental authority lies at the crux of the following consideration (according to customary law and Arts. 4 and 5 of the ILC's Draft Articles on the Responsibility of States).[3] Indeed, from a legal perspective it may well in theory be possible to make Armenia responsible for the conduct of Karabakh Armenians and their government to Armenia under customary law.[4] However, at least according to the available sources and documentation, there is no evidence that the prerequisites have been met for such an attribution (cf. below, section IV).

II. Violation of the prohibition on the use of force in international law

1. Applicability of the prohibition on the use of force

International law primarily defines rights and obligations for the states, which are its classical subjects. Individual domestic administrative bodies, such as union republics, are themselves not subjects of international law.[5] This also applies where

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[3] International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Acts, 2001.

[4] Cf. Art. 8 of the ILC Draft Articles and also in regard to them Shaw, International Law, 2003, pp. 704 et seq.; Shearer, Starke's International Law, 1994, p. 279; Hobe/Kimminich, Einführung in das Völkerrecht, 2004, p. 243, Kempen/Hillgruber, Völkerrecht, 2007, pp. 186 et seq.

[5] Cf. Hobe/Kimminich, Einführung in das Völkerrecht, 2004, pp. 120 et seq.

they have specific authority to conclude international treaties. As individual organisational units they are subject solely to the national legal system and not to international law.

In terms of the Karabakh conflict, this means that the prohibition on the use of force under international law did not apply to the Republic of Armenia until it acquired its national independence. As in the case of Azerbaijan, the precise point of independence is open to debate. It is however beyond dispute that Armenia had attained independence at the end of December 1991 at the very latest with the dissolution of the USSR. As of this point Armenia not only enjoyed the rights of the international legal system, but was also subject to its obligations. Correspondingly the conduct of the now independent Republic of Armenia after the end of December 1991 also had to be measured against the prohibition on the use of force under international law.

Before this the Armenian SSR was subject solely to the constitutional provisions of the USSR. In this context attention is to be focussed on Art. 76 of the 1977 Constitution of the USSR, which guaranteed the union republics their own sovereignty. Given Moscow's far-reaching constitutional powers vis-à-vis the union republics, this provision appears most appropriate above all in the relationship among the union republics. Here any unauthorised infringement of the sovereignty of a union republic by another would be clearly unlawful. This must have been applicable in particular to any violent intervention or the systematic encouragement of the use of force in another union republic, in particular in the context of secession. Art. 78 of the Constitution of the USSR underlined in the case of secession that this was coupled with the will of the respective union republic and to this extent was subject to its own sovereignty.[6]

Any conduct by the Armenian SSR that may be regarded as being worthy of rebuke or even unlawful under constitutional law, including an infringement of the sovereignty of the Azerbaijan SSR, cannot play a role in an analysis under international law. Violations of provisions relating to the inner sovereignty of a state can scarcely have any consequences in international law, irrespective of whether over the further course of history the accused administrative entity secedes from the overall state or not. In principle, obligations in international law only develop for subjects of international law. Correspondingly this analysis under international law shall focus above all on the conduct of the Republic of Armenia after the end of December 1991, that is, after the prohibition on the use of force under international law takes effect.

2. Violation of the prohibition on the use of force

a) Scope of protection

Whilst the 1928 Briand-Kellogg Pact contractually introduced only a general prohibition on war, the Charter of the United Nations after the Second World War

6 See above, chapter A, section III. 3.

imposed a comprehensive prohibition on the use of force among states for the first time in the history of international law. Art. 2 para. 4 of the Charter of the United Nations states:

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

This prohibition on the use of force puts in concrete terms the general obligation of states to maintain peace and can now be regarded as being enshrined in customary law[7] as well as a component of compelling international law (*ius cogens*).[8] The concept of force is not defined in the Charter of the United Nations, causing some initial uncertainty as to which forms of force are covered by it.[9] Given the systematic and teleological context of the Charter, however, the prevailing view is that Art. 2 para. 4 only covers military forms of force, that is, armed force.[10] The prohibition on the use of force forbids any threat or use of armed force by one state against another. Political and economic pressure or coercion, on the other hand, may be subject solely to the prohibition on intervention in customary law (see Part III below). This point of view is generally regarded as being supported by the Friendly Relations Declaration, which allocates forms of political and economic pressure to the prohibition on intervention.[11]

With respect to the interpretation of the prohibition on the use of force, the court rulings of the International Court of Justice and international jurisprudence as well as the Friendly Relations Declaration provide a clearer definition by means of largely recognised case groups that are subject to the concept of force. In terms of the concept of force, the Friendly Relations Declaration appears to reflect the practice of the parties to the Charter[12] rather than pertaining to the context of se-

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7 Cf. Fischer, in: Ipsen, Völkerrecht, 2004, p. 1086; Hobe/Kimminich, Einführung in das Völkerrecht, 2004, p. 310; Schweisfurth, Völkerrecht, 2006, p. 358.

8 Cf. Heintschel von Heinegg, in: Ipsen, Völkerrecht, 2004, p. 190; Hobe/Kimminich, Einführung in das Völkerrecht, 2004, p. 310.

9 See Shaw, International Law, 2003, p. 1019; Schachter, International Law in Theory and Practice, 1991, pp. 110 et seq.

10 Cf. Randelzhofer, in: Simma (ed.), The Charter of the United Nations, art. 2(4), notes 15 et seq; Shaw, International Law, 2003, p. 1019; Schweisfurth, Völkerrecht, 2006, p. 358; Stein/ von Buttlar, Völkerrecht, 2005, p. 293.

11 Cf. Randelzhofer, in: Simma (ed.), The Charter of the United Nations, Art. 2(4), notes 18; Schweisfurth, Völkerrecht, 2006, p. 358.

12 Cf. e.g. judgment of the ICJ in the Nicaragua case, ICJ Reports 1986, p. 101; Randelzhofer, in: Simma (ed.), The Charter of the United Nations, art. 2(4), note 25; Brownlie, in: Butler, (ed.), The Non-Use of Force in International Law, 1989, p. 19; Hobe/Kimminich, Einführung in das Völkerrecht, 2004, p. 310; Schweisfurth, Völkerrecht, 2006, p. 358.

cession.[13] The following circumstances are regarded as being covered by the prohibition on the use of force:

- **War of aggression and its propagation:** As the clearest form of the use of military force, the war of aggression is covered by the prohibition on the use of force. The prohibition on wars of aggression prevailed in customary law from the conclusion of the Briand-Kellogg Pact in 1928 up to the beginning of the Second World War.[14] Given the outstanding significance of this prohibition on today's international legal system, the Friendly Relations Declaration stipulates that propaganda for a war of aggression is also forbidden.[15]
- **Other forms of armed force:** The prohibition on the use of force not only relates to war, but also to all forms of the use or threat of military force. For this reason, all forms of armed force by a state against the sovereign territory of another are prohibited, for example bombing or shelling.[16]
- **Military occupation and seizure of the territory of another state following the use of force:** What is also deemed to be enshrined in customary law is that any military occupation, acquisition or annexation of the territory of another state following an illegal use of force is prohibited.[17] This holds true to the extent that in such circumstances the factual sovereignty an aggressor state has acquired can only be maintained by the further threat or use of armed force. To this extent the Friendly Relations Declaration also clarifies that both the occupation and acquisition of foreign state territory are covered by the prohibition on the use of force and that territorial acquisition resulting from the thread or use of

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13 See above, chapter A, sections IV. 3 c) aa).

14 Cf. Hobe/Kimminich, Einführung in das Völkerrecht, 2004, p. 49; Dahm/Delbrück/Wolfrum, Völkerrecht, vol. I/3, 2002, p. 821.

15 Cf. Friendly Relations Declaration, 1970, The principle that states shall refrain in their international relations from the threat or use of force, para. 3. See also Schweisfurth, Völkerrecht, 2006, p. 359.

16 Art. 2 para 4 of the UN Charter and the Friendly Relations Declaration, 1970, the Principle that states shall refrain in their international relations from the threat or use of force, para. 1, in this context speak of "any" form of the use or threat of force. See also Fischer, in: Ipsen, Völkerrecht, 2004, p. 1074.

17 The doctrine under which the violent seizure of territory (annexation) is not recognised was established in state practice only after 1932, in particular with respect to the non-recognition of the Soviet Union's (*de facto*) annexation of the Baltic states in 1940. Cf. Hobe/Kimminich, Einführung in das Völkerrecht, 2004, pp. 73, 85; Epping/Gloria, in: Ipsen, Völkerrecht, 2004, p. 301; Schweisfurth, Völkerrecht, 2006, p. 291.

force may not be recognised as legal.[18] This is emphasized once again in UN-General Assembly Resolution 42/22.[19]

- **Indirect threat and use of force:** According to the rulings of the International Court of Justice, the Friendly Relations Declaration and the widespread view in international jurisprudence, forms of an indirect threat and use of force come under the prohibition on the use of force.[20] Also prohibited are the organisation, support of the organisation and the dispatch of irregular combat forces or armed bands including mercenaries with the objective of invading the sovereign territory of another state.[21] According to the International Court of Justice, illegal forms of support include the arming and training of such troops or bands.[22] Mere financing, on the other hand, is to be covered by the prohibition on intervention. In addition, the prohibition on the use of force applies to military assistance for rebels[23] and to the organisation, incitement and support of civil-war-like or terrorist acts in another state or the participation in them. The same applies to the tolerance of organised activities on one's own territory aimed at committing such acts, insofar as they include the threat or use of force.[24]

b) Factual analysis

The extent to which the Republic of Armenia was and is involved in the conflict of Nagorno-Karabakh and whether this represents a violation of the prohibition on the use of force under international law outlined above is a question of fact that needs to be settled. What makes it more difficult to answer this question is that Armenia officially denies any military involvement.[25] Correspondingly, the Arme-

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18 Cf. Friendly Relations Declaration, 1970, The principle that states shall refrain in their international relations from the threat or use of force, para. 10. See also Schweisfurth, Völkerrecht, 2006, pp. 292 et seq., 359; Kunig, in: Graf Vitzthum, Völkerrecht, 2004, p. 193.

19 Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, 18 November 1987.

20 Cf. Randelzhofer, in: Simma (ed.), The Charter of the United Nations, art. 2(4), note 24; Schachter, International Law in Theory and Practice, 1991, p. 111.

21 Cf. Friendly Relations Declaration, 1970, The principle that states shall refrain in their international relations from the threat or use of force, para. 8; Randelzhofer, in: Simma (ed.), The Charter of the United Nations, 2002, art. 2(4), note 22; Schweisfurth, Völkerrecht, 2006, p. 359; Hobe/Kimminich, Einführung in das Völkerrecht, 2004, p. 308; Herdegen, Völkerrecht, 2006, p .232.

22 Cf. ICJ Reports 1986, pp. 14 et seq.

23 Cf. Fischer, in: Ipsen, Völkerrecht, 2004, p. 1078; Stein/ von Buttlar, Völkerrecht, 2005, p. 311.

24 Cf. Friendly Relations Declaration, 1970, The principle that states shall refrain in their international relations from the threat or use of force, para. 9; Schweisfurth, Völkerrecht, 2006, p. 359.

25 Cf. Human Rights Watch, Azerbaijan, Seven Years of Conflict in Nagorno-Karabakh, 1994, p. 67.

nians of Nagorno-Karabakh are supposed to have achieved their independence on their own and defended it to this day with no international intervention.[26] Armenia therefore does not regard itself as a party to the conflict.[27] In spite of Armenia's officially stated position, a substantial involvement of Armenia in the Nagorno-Karabakh conflict cannot be credibly denied. The Nagorno-Karabakh conflict is a classic example of the military involvement of an external party in an internal conflict and its encouragement of a secession process.

aa) Period from 1986 to May 1992

Let us look more closely at the individual phases of the conflict in this context, starting with the period from 1986 to May 1992. As early as 1986, the efforts for establishing a separatist movement were not only initiated from Nagorno-Karabakh but largely also from the Armenian capital Yerevan. Here networks were established at the highest political level to push for the transfer of the territory.[28] Underground Armenian activists in Karabakh were armed.[29] According to statements by Muradyan, a member of the state planning agency in Yerevan and initiator of the separatist movement, all organisations in Karabakh were armed at an early stage.[30] According to de Waal's investigations, the resignation of the influential Azerbaijani politburo member Aliev was stage-managed.[31] In 1987, a petition was organised in the Armenian SSR and Karabakh on the transfer of the territory. In February 1988 tens of thousands of flyers were printed and flown into Karabakh. The masses in the Armenian SSR and Karabakh were then mobilised and the conflict escalated with both sides committing acts of violence.[32]

The interconnections between Armenia and Karabakh had become even stronger over subsequent years. For example, in 1989 the "Armenian National Movement", founded by a number of dissident Armenians, rapidly became the decisive power in Armenia and Nagorno-Karabakh.[33] With the support of the Armenian National Movement, unauthorised elections were held in Karabakh in August 1989,[34] from which the "National Council" ultimately emerged. The Armenian SSR recognised the "National Council" as the sole legitimate representative body of Armenians in Karabakh.[35] One of the first steps taken by this Armenian parallel government was the formation of Armenian defence forces.[36] In December 1989

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26 According to an interview with Armenian President Kotscherian from 10 July 2007, http://www.spiegel.de/politik/ausland/0,1518,493351,00.html,

27 See e.g. de Waal, Black Garden, 2003, p. 161.

28 Cf. de Waal, Black Garden, 2003, pp. 15 et seq.

29 Cf. de Waal, Black Garden, 2003, p. 18 (with excerpts from the interview).

30 Cf. De Waal, Black Garden, 2003, p. 18.

31 Cf. de Waal, Black Garden, 2003, p. 17.

32 See above, chapter A, section II. 5 and 6.

33 Cf. Avşar, Schwarzer Garten, 2006, p. 137; de Waal, Black Garden, 2003, p. 111.

34 Cf. Avşar, Schwarzer Garten, 2006, p. 137.

35 Cf. Avşar, Schwarzer Garten, 2006, p. 137.

36 Cf. Avşar, Schwarzer Garten, 2006, p. 137.

the Supreme Soviet of the Armenian SSR and the National Council of Nagorno-Karabakh jointly declared the unification of the region with the Armenian SSR.[37]

In 1990 and 1991 rebel groups were drawn up in the Armenian SSR and Nagorno-Karabakh.[38] Gorbachev thereupon enacted a decree, aimed primarily at the Armenian SSR, forbidding paramilitary forces.[39] The militiamen from Armenia, who bought or stole their weapons from Soviet units, moved into Nagorno-Karabakh.[40] This obviously happened with the knowledge and goodwill of the leadership in Yerevan.[41] The volunteer forces and paramilitary troops infiltrated Nagorno-Karabakh, blew up bridges and railway sections and took hostages.[42] The Armenian rebels also infiltrated Armenian-settled villages in the regions of Khanlar and Shaumyan to the north of Karabakh, resulting in the Azerbaijani "Operation Ring" in 1991.[43]

Although the involvement of Yerevan does not come under the international prohibition on the use of force until at least the end of 1991, since Armenia and Azerbaijan did not yet represent independent personalities of international law, the interconnections revealed a broad foundation on which the profound military involvement of subsequent years was based.

At the beginning of 1992 one of the most tragic events of the dispute, a massacre of civilians in Khojaly, took place.[44] According to Azerbaijani figures, Armenian units killed 613 people.[45] Other sources specify 161, 476 or 613 dead.[46] International reports and official investigations speak of corpses, some disfigured beyond recognition, dead women and children and the murder of fleeing civilians.[47]

Azerbaijan makes it quite plain that the perpetrators were troops of Armenia. The Armenians place responsibility on irregular forces and volunteers. An unequivocal involvement of Armenia could not be derived from international report-

37 Cf. Cornell, The Nagorno-Karabakh Conflict, report no. 46, Department of East European Studies, 1999, pp. 23 et seq.; de Waal, Black Garden, 2003, p. 290.

38 Cf. de Waal, Black Garden, 2003, pp. 111 et seq.

39 Cf. de Waal, Black Garden, 2003, p. 111.

40 Cf. de Waal, Black Garden, 2003, pp. 112, 162 et seq.

41 Cf. de Waal, Black Garden, 2003, pp. 112, 180.

42 Cf. de Waal, Black Garden, 2003, pp. 112 et seq., 116.

43 Cf. also above, chapter A, section IV. 3. c) bb) (4).

44 See de Waal, Black Garden, 2003, pp. 169 et seq; Avşar, Schwarzer Garten,2006, pp. 152 et seq.

45 Cf. letter dated 23 April 2002 from the Permanent Mission of Azerbaijan to the United Nations Office at Geneva addressed to the Chairperson on Human Rights, E/CN.4/2002/186.

46 See report Human Rights Watch, The Former Soviet Union, 1993; de Waal, Black Garden, 2003, p. 171; Avşar, Schwarzer Garten, 2006, pp. 152 et seq with further references.

47 See e.g. reports in The Sunday Times, 1 und 8 March 1992; The Boston Globe, 3 March 1992; The New York Times, 3 and 6 March 1992; The Times, 2 and 3 March 1992; taz, 7 March 1992; Frankfurter Rundschau, 2 March 1992. See also de Waal, Black Garden, 2003, 169 et seq; Avşar, Schwarzer Garten, 2006, p. 152 et seq.

ing. Some reports spoke of Armenian troops and the Armenian army,[48] some of irregular troops, the self-defence forces of Artsakh or Karabakh and the support by the 366th Motorised Russian Infantry Regiment.[49] An overall view of the conflict may suggest an involvement of official Armenian forces, but some uncertainty remains which cannot be satisfactorily dispelled here.

According to Human Rights Watch, however, it is clear that Armenia provided support from the beginning of the conflict and supplied weapons evidently to be used for the battle against Azerbaijan.[50] This was further underlined by Gorbachev's decree mentioned above. To this extent one can assume that in the early months of 1992 there was already circumstantial evidence suggesting a violation of the international prohibition on the use of force in accordance with the principles discussed above.

bb) Period from June 1992 to October 1993

Whereas up to May 1992 we were dealing primarily with military combat involving volunteer forces, paramilitaries and mercenaries who were linked to a greater or lesser extent to the leadership in Yerevan, in June 1992 a phase of open warfare began with the Azerbaijani offensive in Nagorno-Karabakh. Prior to this, the Republics of Armenia and Azerbaijan which had recently become independent had commenced a massive military build-up,[51] suggesting not only the threat of military force but also the plotting to use this force. This meant that it had been clear for months in advance that the Karabakh conflict would lead to an interstate war.

The military build-up occurred by taking over weapons and heavy machinery from the splintering Soviet army, whereby Azerbaijan benefited from the fact that more Soviet troops were stationed on its territory than in Armenia. This advantage was balanced out by considerable supplies of weapons from Russia to Armenia in subsequent years, even if the extent of Russian armament supplies to Armenia is not completely clear.[52]

The Azerbaijani June offensive was successful at first and put pressure not only on the leadership of Nagorno-Karabakh, but also to a significant extent on the leadership of Armenia. Although the type of the following intervention was also disputed amongst the Yerevan leadership, both President Ter-Petrosyan and Defence Minister Manukyan ordered Armenia's military to intervene in various op-

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48 According to reports of Reuters from 22 February 1992 and The Washington Times, 2 March 1992.

49 Cf. Human Rights Watch, Azerbaijan, Seven Years of Conflict in Nagorno-Karabakh, 1994, p. 5; reports of The New York Times, 3 March 1992; The Boston Globe, 3 March 1992; 2006, Avşar, Schwarzer Garten, pp. 152 et seq.

50 Cf. Human Rights Watch, Armenia – Human Rights Development, http://www.hrw.org/reports/ 1995/WR95/HELSINKI-01.htm.

51 For details see de Waal, Black Garden, 2003, pp. 194 et seq.

52 For details see de Waal, Black Garden, 2003, pp. 197 et seq.

erations on the territory of Azerbaijan.[53] According to Vazgen Manukyan, Armenia's Defence Minister at the time, one could be certain that the Karabakh-Armenians and the Armenian army were united in military actions, despite anything the leadership of the Republic of Armenia said.[54] Denials of any military involvement by Yerevan were mainly intended for external consumption.

In any case the military support of Karabakh by the Armenian government was reported on.[55] Armenia's military participation in the Karabakh conflict became quite obvious in the scope of the Armenian offensive against the region of Kelbajar in spring 1993.[56] Kelbajar is a district outside Nagorno-Karabakh which, along with the Lachin corridor, separates Nagorno-Karabakh from Armenia. Therefore, it was a territory of the utmost strategic significance even at that time. The brunt of the Kelbajar offensive led by the Armenian troops was made from the west, from Armenia's state territory.[57] A supporting offensive started in the east, from Nagorno-Karabakh, and here, too, the Armenian army provided significant assistance in the form of munitions supplies.[58] The commands for Armenia's participation in the Kelbajar offensive were issued from the highest level, by President Ter-Petrosyan and Defence Minister Manukyan.[59] A further joint offensive of Armenia and Nagorno-Karabakh outside the contested region followed in October against Zengelan, the southernmost tip of Azerbaijan.[60] Human Rights Watch further reported on the involvement of Armenian police, who were clearly supposed to set up checkpoints to protect the occupied territories from looting.[61]

The Kelbajar offensive was the first clear evidence of the Republic of Armenia's direct military involvement in the conflict.[62] Armenia's military offensive, the subsequent occupation by the Armenian military and police as well as the sup-

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53 According to an interview with Armenian Defence Minister Manukyan from 3 October 2000; for excerpts from the interview see de Waal, Black Garden, 2003, pp. 210, 212. See also Avşar, Schwarzer Garten, 2006, p. 161.

54 According to an interview with Armenian Defence Minister Manukyan from 3 October 2000; for excerpts from the interview see de Waal, Black Garden, 2003, p. 210.

55 See Human Rights Watch, Azerbaijan, Seven Years of Conflict in Nagorno-Karabakh, 1994, pp. 67 et seq.

56 For details see de Waal, Black Garden, 2003, pp. 211 et seq; Human Rights Watch, Azerbaijan, Seven Years of Conflict in Nagorno-Karabakh, 1994, p. 68.

57 See de Waal, Black Garden, 212. Human Rights Watch also reports that according to statements of numerous eye witnesses, artillery fire originated in the Armenian region of Vardenis to the west. See Human Rights Watch, Azerbaijan, Seven Years of Conflict in Nagorno-Karabakh, 1994, p. 68.

58 See Human Rights Watch, Azerbaijan, Seven Years of Conflict in Nagorno-Karabakh, 1994, p. 68.

59 According to an interview with Armenian Defence Minister Manukyan from 3 October 2000; for excerpts from the interview see de Waal, Black Garden, 2003, p. 212.

60 Cf. De Waal, Black Garden, 2003, p. 225.

61 Cf. Human Rights Watch, Azerbaijan, Seven Years of Conflict in Nagorno-Karabakh, 1994, pp. 70 et seq.

62 Cf. de Waal, Black Garden, 2003, p. 213.

port with military equipment clearly violated the prohibition on the use of force under international law.

cc) Period from October 1993 to May 1994

Given the enormous international pressure on Armenia after the Kelbajar offensive and the election of a new Azerbaijani president, autumn 1993 offered the opportunity for a peaceful resolution to the conflict. But the internal forces operating on both sides meant that the war machine could not be stopped.[63] According to Ashot Manucharyan, the then security adviser of the Armenian President, President Ter-Petrosyan at first strictly opposed any further military action, at least outside Nagorno-Karabakh, after the Armenian offensives in 1993.[64] However, the final and probably bloodiest phase of the Karabakh war lasting from December 1993 until May 1994 was ushered in, which mainly involved young, inexperienced recruits.

Human Rights Watch and numerous western journalists compiled evidence and indications which exposed the Armenian denial of military involvement as absurd.[65] There were reports of wide-ranging and sudden conscription measures in Armenia, numerous Armenian recruits were interviewed on their stationing in Karabakh and Armenian troop movements to Karabakh were observed. All reports make it clear that the Armenian army was involved and that assistance was provided in the supply of armaments. This was also underlined by the UN Security Council in a resolution of October 1993.[66] This demanded the cessation of all hostile activity by the states involved. Given that Nagorno-Karabakh was not recognised as a state and at the same time Azerbaijan's territorial claim was deemed lawful, this could only have meant Armenia. In this period, too, there are documented violations of the prohibition on the use of force by the Republic of Armenia.

dd) Period from May 1994

The signing of the ceasefire in May 1994 brought the most intensive phase of the Karabakh conflict to an end and this has been followed by a slight cooling-off phase, but conflict still persists today. Given the lack of a solution, Nagorno-Karabakh is still under arms and is protected militarily along the agreed armistice line. In this regard the strong military involvement of the Republic of Armenia be-

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63 Cf. de Waal, Black Garden, 2003, pp. 225 et seq.

64 For excerpts from an interview with Ashot Manucharyan from 15 October 2000 see de Waal, Black Garden, 2003, p. 227.

65 Cf. Human Rights Watch, Azerbaijan, Seven Years of Conflict in Nagorno-Karabakh, 1994, pp. 67 et seq, 90 et seq, with further references; Human Rights Watch, Armenia – Human Rights Development, http://www.hrw.org/reports/1995/WR95/HELSINKI-01.htm; de Waal, Black Garden, 2003, pp. 235 et seq; Levin, The Washington Post, 21 April 1994; Dehdashti, Internationale Organisationen als Vermittler in innerstaatlichen Konflikten, 2000, p. 65.

66 Cf. UN Security Council resolution 874 (1993).

fore 1994 suggests that in recent years, too, Armenia has formed the backbone of the Karabakh defence.

On closer examination, Armenia's political system and the administrative structures in Nagorno-Karabakh can hardly be separated. It can be said now that a kind of loose *de facto* federation exists between Armenia and Nagorno-Karabakh.[67] The interconnections pertain in particular to the military sector and thus also to the military defence and occupation of Karabakh and the seven surrounding administrative districts.

Characteristic are the obvious links between Karabakh and Armenia within the highest command structures. Thus the former President of Armenia, Ter-Petrosyan, was a member of the "Karabakh Committee", the main sponsor of the separatist movement in Karabakh.[68] The former President and Prime Minister of Armenia, Kocharyan, was formerly President of Nagorno-Karabakh. Alongside this the Defence Minister of Karabakh, Sarkissyan, was appointed Defence Minister of Armenia in 1993.[69] In 1994 the Karabakh military leader Babayan was appointed Major General of the Armenian army.[70] In 2007 a further defence minister of Karabakh was appointed General Chief of Staff of the Armenian army.[71] These links suggest more than the fact that the political systems of Armenia and Karabakh are closely intertwined with one another. It also becomes clear that the military apparatuses of Armenia and Karabakh are already being synchronised through their leadership structures – by individuals who have strong roots in the governing command structure of Karabakh.

The interconnections between the Armenian army and the military forces of Karabakh, however, not only pertain to the highest command structures, but also to the entire military body defending and occupying Karabakh. Atkinson, a rapporteur of the Parliamentary Assembly of The European Council, points out that Armenia still has soldiers stationed in the Karabakh region and the surrounding districts.[72] According to the International Crisis Group, Armenian nationals make up half of the defence and occupying forces, demonstrating just how dependent Karabakh is on Armenia militarily.[73] Also official election observers of the OSCE

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67 In accordance with: Cornell, Journal of South Asian and Middle Eastern Studies vol. 20/no. 4 (1997) 1 et seq; Cornell, The Nagorno-Karabakh Conflict, report no. 46, Department of East European Studies, 1999, p. 44; de Waal, Black Garden, 2003, p. 246.

68 Cf. Human Rights Watch, Azerbaijan, Seven Years of Conflict in Nagorno-Karabakh, 1994, p. 110.

69 Cf. Human Rights Watch, Azerbaijan, Seven Years of Conflict in Nagorno-Karabakh, 1994, p. 111.

70 Cf. de Waal, Black Garden, 2003, p. 256.

71 Cf. interview with Armenian President Kotscherian from 10 July 2007 on spiegel-online, http://www.spiegel.de/politik/ausland/0,1518,493351,00.html.

72 See Report of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, 29 November 2004, Doc. 10364, III. para. 6. This is confirmed by a report of Deutschlandfunk "Demokratie im Ausnahmezustand" on 18 July 2007.

73 Cf. International Crisis Group, Europe Report no. 166, 2005 (http://www.crisisgroup.org/home/index.cfm?id=3652&l=1).

concluded in 1998 that soldiers from Armenia were especially stationed in Kelbajar, which is one of the occupied districts.[74] De Waal even reports that young Armenian recruits are doing their military service along the Armenian-Azerbaijani armistice line.[75] Furthermore, Dehdashti speaks of repeated joint military exercises of Armenia and Karabakh, giving rise to the suspicion that a joint defence of the captured territories is being coordinated. [76] In the final analysis it is clear that official Armenian military forces are directly and indirectly involved in the military occupation of Nagorno-Karabakh.

This is also confirmed by a resolution of the Council of Europe of 2005[77] and the US Department of State's human rights report for Armenia of 2006.[78] Whilst the US human rights report plainly speaks of an occupation by Armenia, the resolution of the Council of Europe makes it clear in the context of Nagorno-Karabakh that the occupation of a foreign territory by a member state of the Council of Europe represents a gross violation of the obligations of a member. As the entity established in Nagorno-Karabakh is not a member of the Council of Europe, this again can only mean Armenia.

In conclusion both the occupation of Azerbaijani territories by Armenian troops and also the profound interconnection between the Armenian and Karabakh military systems must be seen as a violation of the prohibition on the use of force under international law. We have already seen above that it is sufficient for a foreign state to support the organisation of irregular forces in another state or otherwise provide military assistance for a violation of the prohibition on the use of force. In the case of Nagorno-Karabakh this is a much more profound form of military involvement of a foreign state. Armenia is not only providing military organisational input and other military assistance. Moreover the military body that is occupying Karabakh and the seven surrounding districts presents itself as one whole military body, consisting of troops from Armenia and Karabakh, even though details of existing command structures are not documented.

c) Justifications: exceptions to the prohibition on the use of force

Not all violations of the prohibition on the use of force necessarily fall foul of international law. Just like national criminal law, international law also recognises situations in which the breach of a rule is rendered lawful by means of justifica-

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74 Election observers of the OSCE expressed their strong suspicion that during the Armenian elections in 1998 one of the mobile election boxes was brought to Armenian soldiers in Kelbajar. See OSCE – Office for Democratic Institutions and Human Rights, Republic of Armenia Presidential Elections March 16 and 30 1998, Final Report, p. 8.

75 See de Waal, Black-Garden, 2003, p. 247.

76 Cf. Dehdashti, Internationale Organisationen als Vermittler in innerstaatlichen Konflikten, 2000, p. 65.

77 Council of Europe Parliamentary Assembly resolution 1416 (2005).

78 See Country Reports on Human Rights Practices - 2006 released by the Bureau of Democracy, Human Rights, and Labor, 6 March 2007; http://www.state.gov/g/drl/rls/hrrpt/2006/78799.htm.

tions. The issue here is whether the Republic of Armenia is also able to invoke grounds which might appear to justify its conduct.

The Charter of the United Nations expressly recognises two situations in which the use of force among subjects of international law is permitted. These are measures with a mandate of the UN Security Council which can order sanctions (Art. 42 Charter of the United Nations) and measures of individual and collective self-defence (Art. 51 Charter of the United Nations) (see part aa below). Furthermore the existence of unwritten justifications in various situations is subsequently examined (see part bb below).

aa) Written justifications

Since in the present case the UN Security Council did not issue a mandate which Armenia could invoke, Art. 42 of the Charter of the United Nations fails as a justification. In its resolutions the Security Council demanded the exact opposite, namely that hostilities and the use of force must cease in relation to the acquisition of territories and that occupying forces must be withdrawn.[79]

The only matter that remains to be investigated is whether Armenia could or can invoke Art. 51 of the Charter of the United Nations in respect of a collective defence of Nagorno-Karabakh. To do so there would have to be a need for self-defence as defined by Art. 51 of the Charter of the United Nations. A case for self-defence is assumed where a member state of the United Nations is attacked. In the present case the military actions of the Republic of Azerbaijan during the time of war were solely aimed at the region of Nagorno-Karabakh which is assigned to it. To the present day, Nagorno-Karabakh has not acquired the status of a state and a member of the United Nations. It is still part of the territory of Azerbaijan. Correspondingly, it is not possible to assume a legitimacy of the Armenian use of force during that time.

One might possibly assume that Nagorno-Karabakh, at least after 1994 when quasi-state administrative structures were established, comes under the protection of the prohibition on the use of force (pursuant to Art. 2 para. 4 of the Charter of the United Nations or international customary law) and the collective defence rules (Art. 51 of the Charter of the United Nations). Here the fundamental question is whether under certain circumstances rights and obligations under international law can be attached to *de facto* regimes and whether they can lodge self-defence claims against their parent state.

To date there does not appear to be any clear state practice with respect to all forms of *de facto* regimes.[80] In any case, one view in the international legal literature holds at least Art. 2 para. 4 of the Charter of the United Nations or the customary law prohibition on the use of force to be relevant, albeit it is unclear whether collective self-defence under Art. 51 of the Charter of the United Nations

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79 UN Security Council resolutions 822 (1993) and 874 (1993).

80 See also Frowein, Das de facto-Regime im Völkerrecht, 1968, pp. 39 et seq, 66.

should be possible against the parent state.[81] Originally this view, developed mainly by Frowein, pertains to certain state forms that arose during the Cold War which were regarded by at least some states as *de facto* regimes, such as the GDR, the People's Republic of China and the People's Republic of North Korea.[82] The key issue for Frowein was that, in accordance with Art. 2 para. 4 UN Charter, member states shall refrain in their *international relations* from the threat and use of force. He did not perceive Art. 2 para. 4 UN Charter to be applicable in purely internal conflicts. Frowein regarded the international relations of a state to be affected when the *de facto* regime was at peace and had an actual international status.[83] This was particularly true for entities which were integrated into a global political and economic block structure and partially recognised as states. However, Nagorno-Karabakh does not satisfy these requirements. The region has neither been integrated into an international structure nor recognised by any state.

In the end it is not important for the issue of justification of Armenia's conduct whether Nagorno-Karabakh is considered as a *de facto* regime that might be protected by Art. 2 para. 4. In regard to prerequisites, a clear distinction is to be made between Art. 2 para. 4 and Art. 51. In contrast to Art. 2 para. 4, Art. 51 unequivocally requires the occurrence of an armed attack against a member of the United Nations. Considering this clear wording, there is no room for discussion as is the case with Art. 2 para. 4 in regard to the term "any state". This assumption is also confirmed by the decision of the International Court of Justice in the case of the construction of an Israeli wall in the occupied Palestinian territory. The ICJ spelled out that Art. 51 recognizes a right of self-defence in the case of armed attack by one state against another state. In respect of the attacks from within the Palestinian territory that is not yet recognized as a state, the ICJ ruled out the applicability of Art. 51 in favour of Israel.[84] Accordingly a justification of Armenia's conduct is also impossible under Art. 51 of the Charter of the United Nations.

bb) Unwritten justifications

Alongside these written justifications some unwritten justifications are discussed in particular in international jurisprudence. This applies in the first instance to the question whether a state may intervene to assist breakaway groups in a secession

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81 Cf. Randelzhofer, in: Simma (ed.), The Charter of the United Nations, art. 2(4), note 27; Schweisfurth, Völkerrecht, 2006, p. 359; Verdross/Simma, Universelles Völkerrecht, 1984, pp. 240 et seq.; Stelter, Gewaltanwendung unter und neben der UN-Charter, 2007, pp. 124, 126.

82 See Frowein, Das de facto-Regime im Völkerrecht, 1968, p. 36; Brownlie, International law and the use of force by states, 1963, p. 380; Neuhold, Internationale Konflikte – verbotene und erlaubte Mittel ihrer Austragung, 1977, pp. 75 et seq.; Stelter, Gewaltanwendung unter und neben der UN-Charter, 2007, p. 124.

83 Cf. Frowein, Das de facto-Regime im Völkerrecht, 1968, pp. 51 et seq., 66 et seq.

84 See ICJ, Legal Consequences of the Construction of a Wall in the occupied Palestinian Territory, 9 July 2004, para. 139.

conflict taking place in a different state. The prevailing doctrine rejects this view.[85] Since the prevailing view holds that ethnic groups and minorities cannot enforce a claim to secession, there is no legitimate reason for another state to intervene militarily.

A different viewpoint holds a right to intervention to be justified in exceptional cases. This is said to be the case when a crisis situation arises as a result of severe and systematic abuse of human rights leading to a right to secession of the oppressed minority.[86] However, this view is based neither on a unified state practice[87] nor is it underpinned for instance by the Friendly Relations Declaration. Insofar, it can scarcely have any foundation in customary law. On the contrary, the Friendly Relations Declaration makes expressly clear in the context of the exercise of the right to self-determination that it is incumbent on all states to refrain from any actions that are aimed at the partial or total disruption of the national unity and territorial integrity of another state.[88] That notwithstanding, the conditions required by the lesser held view were not applicable to Nagorno-Karabakh in any case. As follows from Chapter A above, there was no situation in which the minority view would have affirmed a right to secession.[89] Therefore, even those who subscribe to this view would not conclude that Armenia's military intervention was legitimate.[90]

There is a parallel discussion as to whether a state without the legitimacy of the UN Security Council may intervene in the events of another for humanitarian reasons. This discussion is in part identical to the one on the previous point,[91] as in the event of the most severe and systematic abuses of human rights the requisite humanitarian crisis arises at the same time. The prevailing view rejects an unauthorised humanitarian intervention by one state in another.[92] Instead this requires a mandate by the UN Security Council. A minority view also holds an unauthorised

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85 Cf. Shaw, International Law, 2003, pp. 1038 et seq.; Nolte, in: Kohen (ed.), Secession, International Law Perspectives, 2006, pp. 91 et seq; Tomuschat, in: Kohen (ed.), Secession, International Law Perspectives, 2006, p. 44; Kohen, in: Kohen (ed.), Secession, International Law Perspectives, 2006, p. 11; Herdegen, Völkerrecht, 2006, pp. 232 et seq.; Stein/ von Buttlar, Völkerrecht, 2005, p. 311.

86 Cf. Stein/ von Buttlar, Völkerrecht, 2005, p. 311.

87 Cf. Nolte, in: Kohen (ed.), Secession, International Law Perspectives, 2006, pp. 91, 93; Stein/ von Buttlar, Völkerrecht, 2005, p. 311.

88 See Friendly Relations Declaration, 1970, The principle of equal rights and self-determination of peoples, para. 8.

89 Cf. above, chapter A, section IV. 3. c) bb) (4).

90 See also Doering, in: Simma (ed.), The Charter of the United Nations, 2002, art. 1, Annex: Self-Determination, note 61.

91 Cf. Doering, in: Simma (ed.), The Charter of the United Nations, 2002, art. 1, Annex: Self-Determination, note 61; Tomuschat, in: Kohen (ed.), Secession, International Law Perspectives, 2006, p. 44.

92 Cf. Herdegen, Völkerrecht, 2006, p. 233; Schweisfurth, Völkerrecht, 2006, p. 368; Hobe/Kimminich, Einführung in das Völkerrecht, 2004, pp. 332, 339 et seq.; Fischer, in: Ipsen, Völkerrecht, 2004, p. 1084.

humanitarian intervention to be lawful should there be an assumption of genocidal and systematic killing and expulsion. However, any intervention should remain subsidiary to measures of the UN Security Council and, to avoid the risk of abuse, the evaluation by the UN Security Council of the existence of the conditions for intervention should carry more weight.[93]

According to the prevailing view, Armenia would not have been justified in the context of possible humanitarian factors as no mandate of the UN Security Council has been passed to date.

The minority view also arrives at the same result. Thus the UN Security Council has not recognised a humanitarian situation requiring intervention to date. Besides, Armenia's conduct cannot be considered as a humanitarian intervention in the sense of the approach. Even though the humanitarian situation of the Armenian civilians confronted with the war and Azerbaijani measures must have played a role for Armenia, humanitarian factors were and are obviously not the main and only reasons for the Armenian leadership. The first clearly documented direct intervention of the Armenian army took place in the wake of the Azerbaijani June offensive of 1992. At that time the Armenian leadership was under immense pressure as there was a risk that Azerbaijan would recapture the entire region of Nagorno-Karabakh. This would have settled the conflict in favour of Azerbaijan. The Armenian counteroffensive was correspondingly mainly concerned with preventing further losses of territory and recapturing recently lost territory. Its focus was the success of the Armenian secession movement itself. That is why the situation must be considered as war to finalize an illegal secession, but not as humanitarian intervention. For this reason the Armenian leadership paid no consideration to the humanitarian situation on the other side. Moreover, all Azerbaijanis were expelled from Nagorno-Karabakh. Even today, humanitarian aspects do not seem to be the main reasons for the occupation of Nagorno-Karabakh. The central issue remains the maintenance of the de facto independence by itself. All Azerbaijani offers of autonomy and humanitarian guaranties are categorically dismissed. Safeguarding the rights of Nagorno-Karabakh Armenians within Azerbaijan is not seriously considered as an option to solve the conflict.

In conclusion there are thus no reasons to justify the conduct of Armenia, which violates international law. This is also the basic assumption of the resolutions of the UN Security Council and the Council of Europe in which no reference whatever is made to any justifications.[94] On the contrary, they underline the unconditional validity of the prohibition on the use of force by emphasising the territorial integrity of Azerbaijan and demanding the withdrawal of the occupying forces.

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93 Cf. Herdegen, Völkerrecht, 2006, p. 250.

94 See UN Security Council resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993); Council of Europe Parliamentary Assembly resolution 1416 (2005).

III. Violation of the prohibition on intervention under international law

Along with the prohibition on the use of force the pillars of international law also include the prohibition on intervention. The prohibition on intervention between states has its foundations in customary law and is based on the principle of the sovereignty of the states.[95] Intervention is understood to mean the interference of a state in the internal and external affairs of another state.[96] Intervention is always deemed prohibited under international law if the matter in question is subject to exclusive state responsibility and has not been transferred or shared under international law and if the intervention happens under the threat or use of coercion.[97] The threat and use of force is the strongest form of the threat or use of coercion, which is why a violation of the prohibition on the use of force is at the same time a violation of the prohibition on intervention.[98] Thus, Armenia has already violated the prohibition on intervention by virtue of its violation of the prohibition on the use of force under international law, and is continuing to do so.

The prohibition on intervention, however, goes far beyond the prohibition on the use of force, albeit its foundation in customary law means that its boundaries are less clearly defined than those of the prohibition on the use of force. The International Court of Justice, the Friendly Relations Declaration and literature on international law have nonetheless helped give the prohibition on intervention some clearer contours. It is considered to apply to financial support, arms supplies, training assistance and logistical support for rebels.[99] It prohibits interventions in conflicts with civil-war-like characteristics within another country and the organisation, support, propagandistic fomenting of and incitement to subversive, terrorist or armed activities intended to lead to overthrowing power relationships.[100] This is particularly relevant in the context of secession conflicts led by rebels and accom-

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95 Cf. Shaw, International Law, 2003, p. 1039; Fischer, in: Ipsen, Völkerrecht, 2004, p. 1100.

96 See Friendly Relations Declaration, 1970, The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, para. 1.

97 See Shaw, International Law, 2003, p. 1039; Fischer, in: Ipsen, Völkerrecht, 2004, p. 1100.

98 Cf. Schweisfurth, Völkerrecht, 2006, p. 355; Fischer, in: Ipsen, Völkerrecht, 2004, p. 1104.

99 See ICJ (Nicaragua case), ICJ Reports 1986, pp. 108, 124; Friendly Relations Declaration, 1970, The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, para. 2; Fischer, in: Ipsen, Völkerrecht, 2004, p. 1104; Schweisfurth, Völkerrecht, 2006, p. 355; Stein/ von Buttlar, Völkerrecht, 2005, p. 243.

100 See Friendly Relations Declaration, 1970, The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, para. 2; Fischer, in: Ipsen, Völkerrecht, 2004, p. 1104; Stein/ von Buttlar, Völkerrecht, 2005, p. 243.

panied by civil-war-like incursions.[101] In contrast medical care and supplying the combating parties and population with food and clothing do not come under the prohibition on intervention, as long as they benefit all affected without discrimination.[102]

As has been intimated, Armenia by its military intervention is violating both the prohibition on the use of force and the prohibition on intervention. Irrespective of this, there is a separate violation of the prohibition on intervention. Upon closer examination, Nagorno-Karabakh has since developed into a quasi-emancipated province of Armenia by virtue of the substantial interconnections deriving from Armenia in particular.[103] Indications for this are the aforementioned personnel links at the highest political level and the close interrelationship of the military apparatuses.[104] Alongside this, Armenia supports a large part of the Karabakh budget through the granting of loans.[105] It is said that this amounts to 50% of the Karabakh budget.[106] In the early years of the conflict it is said to have been as high as 90% according to Armenian officials.[107] Armenia thus forms not only the financial backbone of the Karabakh entity, but in doing so also grants itself essential possibilities of political intervention. Further indication that Armenia and Karabakh are growing together are the synchronisation of the currency and the entitlement of Karabakh-Armenians to an Armenian passport.[108] The latter measure causes the complete blurring of the distinction of the two Armenian population groups. For this reason, these circumstances produce a subversive form of interconnection and fusing of Armenia with Nagorno-Karabakh which is based on the *de facto* exclusion of the exercise of Azerbaijani sovereignty. There are also no justifications for this.

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101 See also Nolte, in: Kohen (ed.), Secession, International Law Perspectives, 2006, p. 93; Kohen, in: Kohen (ed.), Secession, International Law Perspectives, 2006, p. 11.

102 Cf. Fischer, in: Ipsen, Völkerrecht, 2004, p. 1104.

103 In accordance with: Cornell, The Nagorno-Karabakh Conflict, report no. 46, Department of East European Studies, 1999, p. 44; de Waal, Black Garden, 2003, p. 246.

104 See above, section II. 2. b) dd).

105 Cf. Report of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, 29 November 2004, Doc. 10364, III. para. 6; Human Rights Watch, Azerbaijan, Seven Years of Conflict in Nagorno-Karabakh, 1994, p. 110; de Waal, Black Garden, 2003, p. 246; interview with Armenian President Kotscherian from 10 July 2007, http://www.spiegel.de politik/ausland/0,1518,493351,00.html.

106 See International Crisis Group, Europe Report no. 166, 2005.

107 Cf. Human Rights Watch, Armenia – Human Rights Development, http://www.hrw.org/reports/ 1995/WR95/HELSINKI-01.htm.

108 See Report of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, 29 November 2004, Doc. 10364, III. para. 6; de Waal, Black Garden, 2003, p. 246.

IV. Preliminary conclusion

In conclusion we can assume profound links and involvement of the Republic of Armenia in the Karabakh conflict. The connections documented internationally suggest that an independent *de facto* regime can scarcely be assumed, but instead the existence of a loose *de facto* federation which is supported mainly by Armenia in military, political and financial terms. Armenia thus has not only violated the prohibition on the use of force and the prohibition on intervention under international law in the past, but continues to do so in an unjustified form. However, this says nothing about the legitimacy of a conceivable Azerbaijani attack on Nagorno-Karabakh or Armenia, especially given the applicable armistice line which is covered by the international prohibition on the use of force.[109]

Furthermore, the far-reaching involvement of Armenia in the military occupation of Nagorno-Karabakh also makes clear, that the international rules for militarily occupied areas must be observed, especially Arts. 47 et seq. of the Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949). Infringements would constitute further violations of essential rules of international law.

In the final analysis, the customary rules on legal consequences and their invocation in the case of internationally wrongful acts, as they are laid down in parts 2 and 3 of ILC's Draft Articles,[110] apply to Armenia. Accordingly, not only the obligation to cease the wrongful acts must be considered as a legal consequence, but also the obligation to offer appropriate assurances and guaranties of non-repetition as well as the obligation to make reparation for injury arising out of the wrongful acts.

In the end, it must be added that in chapter B it was only examined whether Armenia was or still is breaching international obligations by its own state entities. Hence the conducts of state organs and persons or entities that are empowered to exercise authority according to Arts. 4 and 5 of the ILC's Draft Articles were solely considered to be acts of Armenia. However, customary international law, which is partly reflected in the ILC's Draft Articles, acknowledges further rules on the attribution of conduct to a state. Thus Art. 8 of the ILC's Draft Articles provides for the attribution of the conduct of persons or groups of persons to a certain state if the persons or groups of persons are in fact acting on the instructions of, or under the direction or control of that state. In this respect the legitimate question must be raised whether Armenia also has to take responsibility for the conduct of Karabakh Armenians and their government. From the perspective of Azerbaijan, this is undoubtedly the case as it considers the Karabakh government to be a pup-

[109] On the validity of the prohibition on the use of force in the context of armistice lines see Friendly Relations Declaration, 1970, The principle that states shall refrain in their international relations from the threat or use of force, para. 4; Shaw, International Law, 2003, p. 1018.

[110] International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Acts, 2001.

pet regime set up by Armenia.[111] The documents available here are not so clear in this regard. According to Art. 8 of the ILC's Draft Articles and its official commentary an attribution of the conduct of the Karabakh government to Armenia requires a proof of instructions, directions or control in respect of specific wrongful operations of the Karabakh government.[112]

In addition, in the Nicaragua case, the International Court of Justice declared that it must be proven that the state in question had *effective control* of certain wrongful acts.[113] Solely financing and equipping insurgents as well as rough planning and general overall control would be insufficient.[114] Of course, such acts can nonetheless constitute violations of the prohibition on the use of force and the prohibition on intervention through state organs and persons or entities that are empowered to exercise authority (cf. above, sections II. and III.). In the Tadic case, the Yugoslav War Crimes Tribunal supported a softer approach. For the Tribunal the exercise of an *overall control* was sufficient for an attribution of wrongful operations to a state.[115]

In the case of Nagorno-Karabakh, it is assumed here that a certain kind of loose *de facto* federation has been established in the meantime. Strong circumstantial evidence points to this conclusion. But the sources available here are scarcely sufficient to characterize in detail the existing connections between Armenia and Nagorno-Karabakh in regard to certain operations. Even if it is assumed that Armenia has deep political and military influence on Karabakh, it remains unclear as to whether it exerts an *overall* or an *effective* control of certain conducts or operations of the Karabakh government or of parts of the Karabakh Army. The given documentation certifies that the military body occupying Nagorno-Karabakh is composed of Armenian state troops and Karabakh-Armenian troops.[116] Naturally, this requires a mutual command, co-ordination and correspondingly a deep involvement of Armenia's state organs and persons with Armenian governmental authority. Thus a violation of international law was already determined above. However within the scope of this treatise it is difficult to provide clear proof of the Armenian state command of Karabakh troops, even though this is conceivable.

But irrespective of the question as to whether Armenia is responsible for the conduct of the Karabakh Armenians, it must be recorded as a point of fact that

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111 Letter dated 8 October 2007 from the Permanent Representative of Azerbaijan to the United Nations, UN General Assembly doc. A/62/49, pp. 6 and 14 et seq.

112 Cf. also Shaw, International Law, 2003, p. 704.

113 Case concerning the military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America), ICJ Judgment of 27 June 1986; ICJ Reports, 1986, pp. 14, 64 et seq. Cf. Shaw, International Law, 2003, pp. 704 et seq.; Hobe/Kimminich, Einführung in das Völkerrecht, 2004, pp. 243 et seq.; Schweisfurth, Völkerrecht, 2006, pp. 236 et seq.; Kempen/Hillgruber, Völkerrecht, 2007, pp. 186 et seq.

114 Cf. Kempen/Hillgruber, Völkerrecht, 2007, pp. 186 et seq.

115 Prosecutor v. Tadic, ICTY Judgement, IT-94-a-1-A of 15 July 1999, ILM 38 (1999), pp. 1518 et seq. Cf. Shaw, International Law, 2003, pp. 704 et seq.; Hobe/Kimminich, Einführung in das Völkerrecht, 2004, pp. 244, 569 et seq.

116 See above, section II. 2. b) dd).

without any justification Armenia has been violating and continues to violate international law in several respects through its state organs, entities and persons with governmental authority, resulting in the legal consequences indicated above.